(1)

Supreme Court, U.S.
FILED

No. _____

06-738 NOV 22 2006

OFFICE OF THE CLERK

In The

Supreme Court of the United States

WINFORD KENT BISHOP,

Petitioner,

v.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT,

Respondent.

On Petition For Writ Of *Certiorari*
To The United States Court Of Appeals
For The Fifth Circuit

PETITION FOR WRIT OF *CERTIORARI*

WINFORD KENT BISHOP
Counsel of Record
1080 Old Roswell Road
Roswell, Georgia 30076
(770) 587-2857

November 13, 2006

QUESTION PRESENTED FOR REVIEW [1]

Background

In 1994, the chief judge of the Fifth Circuit summarily disbarred Petitioner. The predicate was a GA disbarment, *In re Bishop*, 442 S.E.2d 734 (1994) (4-3). Subsequently, the chief judge refused to rehear, or to refer the case to a three-judge panel, or to submit to the court an *en banc* rehearing petition (Ltr. Clk., 7a). In April 2006, the Supreme Court decided *Jones v. Flowers*, 126 S.Ct. 1708 (2006), which indicates that the GA bar and court denied Fourteenth Amendment Due Process.

In July 2006, Petitioner filed in the Fifth Circuit a joint Petition for Writ of Mandamus that the clerk not assign to the chief judge a Petition for Readmission to the Fifth Circuit Bar, Petition for Writ of Prohibition that the chief judge not adjudicate the readmission petition, and Petition for Readmission requesting *inter alia* that the single-judge disbarment be vacated and the GA disbarment be disaffirmed. On August 8, 2006, a panel of the Fifth Circuit denied the petitions for want of jurisdiction holding that the court lacked "appellate" jurisdiction over "this mandamus petition." Op., 2a.

Question

Can the Fifth Circuit panel get away with refusing to consider the Petition for Readmission by labeling it something it was not, and then saying that it cannot review what the court has just called it? Put another way, when an attorney asks for reinstatement, can an appeals panel get away with refusing to deal with the request on the merits?

---

[1] Petitioner has at all material times been a member in uninterrupted good standing of the Bar of the Supreme Court of the United States (1978) and the State of New York (1968) which were informed of the GA proceedings. Aff. to Jt.Pets. ¶ 52 & Ex.1.

LIST OF DEEMED PARTIES TO CASE IN COURT OF APPEALS

Fifth Circuit judges: Edith H. Jones, Chief Judge; Carolyn Dineen King, Thomas M. Reavley, Will Garwood, E. Grady Jolly, Patrick E. Higginbotham, W. Eugene Davis, Jerry E. Smith,[2] John M. Duhé Jr., Jacques L. Wiener, Jr., Rhesa H. Barksdale, Emilio M. Garza,[3] Harold R. DeMoss, Jr., Fortunato P. Benavides, Carl E. Stewart, James L. Dennis, Edith Brown Clement,[4] Edward Charles Prado, Priscilla Richman Owen, Circuit Judges. Fifth Circuit clerk: Charles R. Fulbruge III.

---

[2] Panel member, August 8, 2006; October 4, 2006.
[3] Panel member, August 8, 2006.
[4] Panel member, August 8, 2006.

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW i

LIST OF DEEMED PARTIES TO THE CASE IN COURT OF APPEALS ii

OPINIONS BELOW 2

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 2

ANALYSIS OF FIFTH CIRCUIT PROCEEDINGS
- Year 1994 4
- Year 2006 6

REASONS *CERTIORARI* SHOULD BE GRANTED 10

1. VOID 1994 SINGLE-FIFTH-CIRCUIT-JUDGE DISBARMENT WOULD ESCAPE REVIEW
   - A. Article III 10
   - B. 28 USC § 46(c) 10
   - C. FRAP 27(c) 11
   - D. Fifth Amendment 11
   - E. Circuit Conflicts 12
   - F. Supreme Court 14
   - G. No Laches 14
   - H. Right to Exoneration 15

2. VOID 1994 GEORGIA DISBARMENT WOULD ESCAPE DISAFFIRMANCE UNDER *SELLING v. RADFORD*
A. Introduction 15
B. Fourteenth Amendment 15
C. *Selling v. Radford* 16
D. *Jones v. Flowers* 16
E. Supreme Court 17
F. Right to Disaffirmance 17

3. WRONGFUL DECISION ABOUT JURISDICTION TO REINSTATE ATTORNEY TO FIFTH CIRCUIT BAR WOULD ESCAPE REVIEW
A. Supreme Court 17
B. Circuit Conflicts 20

4. FIFTH CIRCUIT RELIANCE ON UNPUBLISHED INTERNAL POLICIES WOULD ESCAPE REVIEW
A. Published Local Circuit Rules are Authorized 22
B. Unpublished Local Rules are Not Authorized 22
C. Unpublished Fifth Circuit Internal Policies Violate Fifth Amendment 22
D Inconsistency in Fifth Circuit 24

5. OTHER REASONS TO GRANT *CERTIORARI*
A. Fifth Circuit History 24
B. Lack of Recent Supreme Court Review 24
C. Judge in Own Case 25
D. Violation of Full Faith and Credit 25

CONCLUSION 25

APPENDIX

Decision of Three-Judge Panel, Fifth Circuit, August 8, 2006 1a

Order of Chief Judge, Fifth Circuit, July 15, 1994 4a

Order on Petitions for Rehearing, October 4, 2006 5a

Letter of Clerk on Rehearing, August 4, 1994 7a

Email from Fifth Circuit Clerk, June 13, 2006 8a

Email from Fifth Circuit Clerk, October 6, 2006 9a

Constitutional and Statutory Provisions 10a

TABLE OF AUTHORITIES

Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S.Ct. 2701 (1972) 11

Bowen v. City of New York, 476 U.S. 467, 106 S.Ct. 2022 (1986) 23

Clinton v. City of New York, 524 U.S. 417, 118 S.Ct. 2091 (1998) 25

Ex Parte Bradley, 74 U.S. 364, 19 L.Ed. 214 (1869) 14

Ex parte Burr, 22 U.S. (9 Wheat.) 529, 6 L.Ed. 152 (1824) 11, 18

Ex parte Garland, 71 U.S. (4 Wall.) 333, 18 L.Ed. 366 (1867) 18

Ex parte Robinson, 86 (19 Wall.) 505, 22 L.Ed. 205 (1874) 14

Ex parte Tillinghast, 29 U.S. (4 Pet.) 108, 7 L.Ed. 798 (1830) 19

Ex parte Wall, 107 U.S. 265, 2 S.Ct. 569 (1883) 24

Foehl v. United States, 238 F.3d 474 (3rd Cir. 2001) 14

Frazier v. Heebe, 482 U.S. 641, 107 S.Ct. 2607 (1987) 14, 23, 24

Gadda v. Ashcroft, 377 F.3d 934 (9th Cir. 2004) 12

Gallo v. United States District Court, 349 F.3d 1169 (9th Cir. 2003) 11

Hazel-Atlas Glass Co v. Hartford-Empire Co., 322 U.S. 238, 64 S.Ct. 997 (1942) 7, 14

In re Bishop, 241 Ga. 264, 442 S.E.2d 734 (1994) i. 1, 3

In re Calvo, 88 F.2d 962 (11th Cir. 1996) 13

In re Evans, 834 F.2d 90 (4th Cir. 1987) 12

In re Fallin, 255 F.3d 195 (4th Cir. 2001) 12

In re Gouiran, 58 F.3d 54 (2nd Cir. 1995) 13, 25

In re Hoare, 155 F.3d 937 (8th Cir. 1998) 13

In re Isserman, 348 U.S. 1, 75 S.Ct. 6 (1954), *earlier appeal*, 345 U.S. 286, 73 S.Ct. 676 (1953) 17

In re Kandekore, 460 F.3d 276 (2nd Cir. 2005) 21

In re Kandekore, 140 Fed.Appx. 848 (11th Cir. 2005) 21

In re Kersey, 402 F.3d 217 (1st Cir. 2005) 12

In re Kramer, 193 F.3d 1131 (9th Cir. 1999); *later appeal* 282 F.3d 721 (9th Cir. 2002) 13

In re Martin, 400 F.3d 840 (10th Cir. 2005) 13, 21

In re Martin, 120 F.3d 256 (Fed.Cir. 1997) 13

In re McBryde, 117 F.3d 208 (5th Cir. 1997) 8, 11

In re Medrano, 956 F.2d 101 (5th Cir. 1992) 13, 24

In re Noell, 93 F.2d 5 (8th Cir. 1937) 12

In re O'Keefe, 513 U.S. 923, 1012 (1994) 17

In re Palmisano, 70 F.3d 483 (7th Cir. 1995) 13

In re Reinstatement of Leaf, 41 F.3d 281 (7th Cir. 1994) 21

In re Rose, 92 L.Ed.2d 764 (1986) 17

In re Ruffalo, 370 F.2d 447 (6th Cir. 1966), *reversed* 390 U.S. 544, 88 S.Ct. 1222 (1968) 12, 15, 17, 24

In re Snyder, 472 U.S. 634, 105 S.Ct. 2874 (1985) 14, 18, 19

In re Surrick, 338 F.3d 224 (3rd Cir. 2003) 13

In re Thalheim, 853 F.2d 383 (5th Cir. 1988) 24

In re Thies, 662 F.2d 771 (D.C. Cir. 1980) 13

In re Watson, 2000 U.S.App.LEXIS 38753 (5th Cir. 2000) 12, 23, 24

In re Watts, 214 Fed. 80 (2nd Cir. 1914) 14

In re Williams, 398 F.3d 116 (1st Cir. 2005) 12

In re Zohdy, 166 Fed.Appx. 156 (5th Cir. 2006) 24

International Shoe Co. v. Washington,
326 U.S. 310, 66 S.Ct. 154 (1945) 23

Jackson v. FIE Corp., 302 F.3d 515 (5th Cir. 2002) 7, 14

Jones v. Flowers, 126 S.Ct. 1708,
164 L.Ed.2d 415 (2006) i, 3, 15, 16

Kremer v. Chemical Constr. Corp., 456 U.S. 461,
102 S.Ct. 1883 (1982) 14

Liljeberg v. Health Services Acquisition Corp.,
486 U.S. 847, 108 S.Ct. 2194 (1988) 25

Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339 (1940) 23

Missouri v. Jenkins, 495 U.S. 33, 110 S.Ct. 1651 (1990) 10

Morton v. Ruiz, 415 U.S. 199, 94 S.Ct. 1055 (1974) 24

Roche v. Evaporated Milk Ass'n, 319 U.S. 21,
63 S.Ct. 938 (1943) 7

Sacher v. Association of Bar, 347 U.S. 388,
74 S.Ct. 569 (1954) 19, 20

Selling v. Radford. 243 U.S. 46,
37 S.Ct. 377 (1917) 14-16

Spevak v. Klein, 385 U.S. 511,
87 S.Ct. 625 (1967) 11

Surrick v. Killion, 449 F.3d 520 (3rd Cir. 2006) 25

Textile Mills Secs. Corp. v. Commissioner, 314 U.S. 326,
62 S.Ct. 272 (1941) 10

Theard v. United States, 228 F.2d 617 (5th Cir. 1956)
reversed 354 U.S.278, 77 S.Ct. 1274 (1957) 18, 19, 24

United States v. Lewis, 478 F.2d 835 (5th Cir. 1973) 21

United States v. Smith, 76 F.Supp.2d 767
(S.D.Tex. 1999) 8

Western Pac. R. Corp. v. Western Pac. R.R. Co.,
345 U.S. 247, 73 S.Ct. 656 (1953) 10

Willner v. Committee on Fitness & Character,
373 U.S. 96, 83 S.Ct. 1175 (1963) 15

Withrow v. Larkin, 421 U.S. 35, 95 S.Ct. 1456 (1975) 25

Woodard v. Hutchins, 464 U.S. 377,
104 S.Ct. 752 (1984) 11

U.S. Constitution

Article I, sec. 8 10

Article III, sec. 1 *passim*

Article III, sec. 3, cl. 2 19

Article IV, sec. 1 25

Fifth Amendment 9, 11, 22, 23, 25

Fourteenth Amendment i, 3, 15

Federal statutes

18 U.S.C. § 3006A(d) (Criminal Justice Act) 8

28 U.S.C. § 46(c) 6, 10

28 U.S.C. § 455 25

28 U.S.C. § 1738 25

28 U.S.C. § 1651(a) (All Writs Act) 7

28 U.S.C. § 2071 22

28 U.S.C. § 2077(a) 22

Federal Rules of Civil Procedure (FRCP)

Rule 60(b)(4) 7

Federal Rules of Appellate Procedure (FRAP)

Rule 27(c) 4, 10, 11

Rule 35 5

Rule 40 5

Rule 46 9

Rule 47 22

Fifth Circuit

Order, Jan. 22, 2001 6

Practitioner's Guide (April 2006) 5, 8-9

Rule 27.2 5, 11

Rule 46.1, 28 USCA Rules (I) 900 (2006) 9, 20, 21

Unpublished Internal Policies 1, 6, 22-24

First Circuit

Rules of Disciplinary Enforcement, Rule 7, 28 USCA Rules (I) 282 (2006) 20

Second Circuit

Rule 46(g)(6). 28 USCA Rules (I) 388 (2006) 20

Third Circuit

Appx. IV, Rules of Attorney Disciplinary Enforcement, Rule 12, 28 USCA Rules (I) 573 (2006) 20

Fourth Circuit

Rule 46(g)(11), Rules of Disciplinary Enforcement. 28 USCA Rules (I) 698 (2006) 20

Sixth Circuit

R. 46(b)(11) (*Reinstatement*), 28 USCA Rules (I) 1026 (2006) 20

Seventh Circuit

Rule 46(d) & IOP 7(b). 28 USCA Rules (II) 38, 63-64 (2006) 20

Eighth Circuit

IOP II (E). 28 USCA Rules (II) 137 (2006) 21

Ninth Cir.

Rule 46-2(h) (*Reinstatement*), 28 USCA Rules (II) 303 (2006) 20

Tenth Circuit

Addenda III, Plan for Attorney Disciplinary Enforcement, Section 10, 28 USCA Rules (II) 449 (2006) 20

Eleventh Circuit

Rule 35-4 5

Addendum Eight, Rule 9,
28 USCA Rules (II) 647 (2006) 20

D.C. Circuit

Appendix II, Rules of Disciplinary Enforcement, Rule VII, 28 USCA Rules (I) 68 (2006) 20

Fed.Circuit

Appendix III, Attorney Discipline Rules, Rule 9 (*Reinstatement*), 28 USCA Rules (II) 822 (2006) 20

Other Authority

Black's Law Dictionary (8th ed. 1999) 6

R.L. Stern, E. Gressman, S. Shapiro, K.S. Geller, Supreme Court Practice (8th ed. 2002) 17, 25

The Federalist No. 47, p.301 (C. Rossiter ed., 1961) 25

Webster's Third International Dictionary (1993) 6

PETITION FOR WRIT OF *CERTIORARI*

Petitioner, a member in good standing of the bar of the Supreme Court of the United States (since 1978), of the U.S. Courts of Appeals for the Second Circuit (since 1970) and Fourth Circuit (since 1977), of the U.S. District Courts for the EDNY and SDNY (since 1970), and of the State of NY (since 1968),[1] respectfully petitions for a Writ of *Certiorari* to review a judgment of the Fifth Circuit. The court holds that a Petition for Readmission to the Fifth Circuit Bar is a "mandamus petition" that the court lacks "'appellate' jurisdiction" to decide and that the court can grant no relief to requests under Art. III, U.S. Const., to vacate a 1994 single-Fifth-Circuit-judge disbarment and disaffirm a 1994 GA disbarment.[2] The court admits the existence of unpublished internal policies pertaining to attorney discipline, yet denies access to Petitioner, although he has a Fifth-Amendment-protected liberty, property, and reputation interest in the revalidation of his former license to practice law in the Fifth Circuit. This Court should grant *certiorari* and direct the Fifth Circuit to find some way to address the merits of his case. The Fifth Circuit's judgment conflicts with the decisions of this Court, other U.S. Courts of Appeals, and there is a compelling need for exercise of supervisory power over the Fifth Circuit.

---

[1] Aff. to Jt. Pets. ¶ 52; ex. 1.

[2] The Fifth Circuit also denied two other jointly-filed petitions (for writs of mandamus and prohibition). On rehearing, Petitioner argued that these two petitions were mooted because they were initially referred to a three-judge panel. The court's denial of rehearing implies disagreement with this contention.

OPINIONS BELOW

The opinion of the Fifth Circuit is so far unreported and reproduced in the Appendix at 1a. The earlier Fifth Circuit order is unreported and reproduced at 4a. Communications from the Fifth Circuit clerk's office are found at 7a (1994) and 8a and 9a (2006).

JURISDICTION

The decision of the Fifth Circuit was entered Aug. 8, 2006 (1a). Petitioner filed petitions for panel and *en banc* rehearing on Sept. 21, 2006, as supplemented. The Fifth Circuit denied rehearings on Oct. 4, 2006 (5a). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL & STATUTORY PROVISIONS

Fifth, 14th Amdts., Art. III, U.S. Const.; 28 U.S.C. §§ 46(c), 2077(a); FRAP. 27(c). *See* 10a.

STATEMENT OF THE CASE [3]

Petitioner did not have actual knowledge of formal GA bar disciplinary proceedings against him until Jan. 20, 1993, when he read of his disbarment in a local legal newspaper while waiting to go to lunch with a lawyer friend. Petitioner never saw any notices or slips for certified or registered mail that the State Bar of GA mailed to him at a former office address that was allegedly forwarded to a post office where he shared a box with two other people who conducted businesses therefrom. In his report, the special master found as fact that Petitioner did not know of the notices of investigation, the notice of discipline, or his disbarment until he read about the disbarment in the newspaper.

---

[3] As this case turns purely on questions of inherent authority and jurisdiction of a federal court of appeals over attorneys (re)applying for membership in its bar, the relevant facts are those set forth in the section entitled, "Analysis of Fifth Circuit Proceedings," *infra*.

The State Bar of GA stipulated that Petitioner lacked actual knowledge of the disciplinary proceedings (SBG's Exceptions to Special Master's Recommendations, June 16, 1993, p.5: "*As the Special Master found, Respondent did not have actual notice of the Notice of Discipline pending against him.*").

Fifth Circuit disbarment was based on the ensuing GA disbarment, *In re Bishop*, 442 S.E.2d 734 (Ga. 1994), service of process of which violated the 14th Amdt. Due Process Clause. This is so because the notice efforts of the process server, the State Bar of GA, did not conform to what a person who actually desires to provide notice would do under the circumstances. Such a person would not turn a blind eye to peculiar knowledge about an intended recipient's actual residence (in Dawson Co., GA) or to the return of initial mailed notices to a former law office, but would employ reasonable follow-up steps to provide notice. That reasonable steps were not utilized is indicated by *Jones v. Flowers*, 126 S.Ct. 1708 (2006). For example, actual residence was ignored and regular mail to the post office box and posting on the former law office were not attempted, although he continued to receive regular mail to the box and attorneys remained at the former law office to alert him of any posting. Jt.Pets. ¶ 3; Aff. ¶ 22(c). In addition, the GA bar could have telephoned Petitioner at the number he was required to list, and did list, with the bar. Furthermore, the GA bar and court took other actions that violated 14th Amdt. Due Process. *See, e.g.*, Aff. to Jt.Pets. ¶¶ 33, 39, 46.

Petitioner's Dec. 1971 membership in the Fifth Circuit Bar continued upon reorganization of the court on Oct. 1, 1981, and he remained a member in good standing until July 15, 1994. In 1966–1967, after graduation from

Duke Univ. in 1961 with a B.A. degree (with Distinction in Economics) and Harvard Law School in 1966 with a LL.B. degree (transformed in 1969 to a J.D. degree), Petitioner served as assistant law clerk to Honorable Griffin B. Bell, Fifth Circuit Judge, at his chambers in Atlanta, GA. Jt.Pets. ¶ 8; Aff. ¶ 50.

In no court has Petitioner been found to have engaged in any form of misconduct. In fact, a judge of the U.S. District Court, N.D.Ga., made this precise finding in an order of Jan. 7, 1999 (Aff. ¶ 60; Ex.2). Indeed, Petitioner won a fee arbitration on the very grievances that ultimately led to the GA disbarment. Aff. to Jt.Pets. ¶ 9-11.

ANALYSIS OF FIFTH CIRCUIT PROCEEDINGS

1994. After Petitioner responded to an order to show cause, the chief judge of the Fifth Circuit disbarred him summarily on July 15, 1994 (4a). In a letter dated Aug. 4, 1994 (7a), the Fifth Circuit clerk reported to Petitioner that after reviewing his July 29, 1994 "Petition to Vacate Void, Single-Judge Order *Coram Non Judice*, to Appeal/Assign Proceeding to Established Three-Judge Panel, for (Re)hearing, and Suggestion for (Re)hearing *En Banc*" the chief judge had declined to reconsider the disbarment.

The clerk also advised that Petitioner's reciprocal attorney disciplinary case would not be referred to a three-judge panel for review of the chief judge's disbarment. This suggests that Petitioner's July 29, 1994 petition was not deemed to be subject to the provisions of Rule 27(c), FRAP, permitting a party in an appeal to obtain a three-judge panel review of a

single judge's decision on specified motions.[4] This advice further suggests that Rule 40, FRAP, permitting petition for panel rehearing was not deemed to apply.[5]

The clerk stated that the case would not be submitted to the entire Fifth Circuit for reconsideration *en banc*; hence the case is not deemed to be subject to Rule 35, FRAP. See 5th Cir. Practitioner's Guide 78 (April 2006),[6] which is similar to 11th Cir. R. 35-4.[7]

Considered together, the inference may be drawn that upon the subject of reciprocal attorney discipline in the Fifth Circuit, the chief judge is the sole decision-

---

[4] 5th Cir. L. R. 27.2 identifies the types of motions a single circuit judge may decide subject to review by a three-judge panel, but disbarment is not listed.

[5] *Cf.* 5th Cir. Practitioners' Guide 78 (Apr. 2006): "When the clerk or a single judge rules on an administrative motion, technically there is no 'rehearing' of that decision. Instead, the term we use is 'reconsideration.' 5th Cir. R. 27.1 and .2 lay out the types of motions that the clerk and single judges may rule on. Any request for review of their decisions should be made by a 'motion for reconsideration.' *** Reconsideration of denials of relief in administrative motions is by a three-judge panel **only.**"

[6] 5th Cir. Practitioners' Guide 78 (Apr. 2006) provides: "Procedural and interim matters, such as stay orders, injunctions pending appeal, appointment of counsel, leave to appeal in forma pauperis, denial of permission for an abusive litigant to file pleadings, denials of more time to file briefs, etc., are not matters subject to en banc consideration."

[7] 11th Cir. R. 35-4. "Matters Not Considered En Banc. Administrative and interim matters (such as stay orders, injunctions pending appeal, appointment of counsel, leave to appeal in forma pauperis and leave to appeal from a non-final order) are not subject to en banc consideration under FRAP 35. En banc petitions will not be entertained in such matters but will be referred as a request for rehearing or reconsideration to the judge or panel that entered the order sought to be reheard." 2006 USCA Rules (II) 554 (2006).

maker. In light of 28 U.S.C. § 46(c), requiring courts of appeals to decide cases in three-judge panels, it follows that the Fifth Circuit did not in 1994 construe such a case as an Art. III case or controversy.[8]

2006. With knowledge that there is no Fifth Circuit rule permitting reinstatement to its Bar after disbarment, unlike most other circuits,[9] Petitioner filed in the Fifth Circuit on July 14, 2006: Petition for Writ of Mandamus to the Fifth Circuit clerk not to assign to the chief judge[10] the Petition for Readmission[11] to its Bar; Petition for Writ of Prohibition to the chief judge not to adjudicate this Art. III case or controversy; and Petition for Readmission.[12] On Aug. 8, 2006, a three-judge panel of the Fifth Circuit initially described the filing as "a pro se petition for a writ of mandamus, a writ of

---

[8] Petitioner did not file a *cert.* petition in 1994 because of extreme financial and temporal constraints and of Supreme Court and circuit case law that a void judgment may be attacked at any time. *See* cases cited *infra* at 14.

[9] *See* rules cited *infra* at 20-21.

[10] This procedure was prompted by notice of unpublished "internal policies" as described by Fifth Circuit deputy clerk in email dated June 13, 2006, that is reproduced at 8a.

[11] Fifth Circuit order, Jan. 22, 2001, refers to "[t]he readmission requirement and readmission fee." 2006 USCA Rules (I) 901 (2006). The court has no rule regarding "reinstatement." Therefore, Petitioner entitled the petition as one for "readmission," not "reinstatement". "Reinstate" is defined in Black's Law Dictionary 1312 (8th ed. 1999) and in Webster's Third International Dictionary 1915 (1993). Black's does not define "readmit", but Webster's at 1890 defines "**readmit**" as "*vt*...: To admit again."

[12] The Joint Petitions were bound with Motion to Incorporate Fifth Circuit Record from Previous Proceedings Compiled in 1993 and 1994, together with Affidavit of Petitioner and Memorandum of Law in Support of Petition[s], supplemented Aug. 8, 2006.

prohibition, and a petition for readmission to the Fifth Circuit Bar" (1a), but later refers to "this mandamus petition" (2a). The only law referenced supports "our mandamus authority" under the All Writs Act, 28 U.S.C. § 1651(a), and consists of two Supreme Court cases on the scope of mandamus under the act, concluding that "the jurisdiction of the circuit court of appeals is exclusively appellate," *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 25 (1943). There is no analysis of the writ of prohibition. The holding follows: "This court has no 'appellate' jurisdiction over proceedings concerning admission to practice law before us. Accordingly, we lack jurisdiction to entertain Bishop's requested relief. Bishop's motion to incorporate the record from proceedings in 1993 and 1994 is denied as moot. PETITIONS DENIED; MOTION DENIED AS MOOT."

However, there is nothing in the Joint Petitions even hinting at a call for the court to invoke its self-identified "appellate" jurisdiction over bar readmissions. It would appear that the panel is responding, belatedly, to the July 29, 1994 petition -- thus waiving any purported laches defense to vacate the void single-judge order. Petitioner simply requested as relief that the Fifth Circuit vacate the 1994 single-judge disbarment. His analogy was to Rule 60(b)(4), FRCP, and his authority was *Hazel-Atlas Glass Co v. Hartford-Empire Co.*, 322 U.S. 238 (1942) (defrauded former litigant filed motion directly in Third Circuit Court of Appeals to vacate ten-years' earlier decision procured by the respondent's 12-year-old fraud; held that court of appeals had jurisdiction and duty to grant motion and vacate earlier decision), and *Jackson v. FIE Corp.*, 302 F.3d 515 (5th Cir. 2002).

The Joint Petitions summarized evidence that the GA disbarment was "contrived" (an adjective coined by the panel) and asked to be readmitted.

The panel may be implying that attorney reinstatement is purely an administrative matter that a panel sitting in a judicial capacity (as a "jurisdictional review panel")[13] lacks Art. III, judicial power to resolve.[14]

---

[13] "Jurisdictional Review Panel. Cases with obvious jurisdictional deficiencies, some successive habeas corpus applications and prisoner pro se mandamus petitions are presented to this panel each month. The cases are not briefed and there is generally a limited record available. However, materials necessary to decide the case are sent to the panel members in advance of the session. Staff attorneys present the cases and a proposed disposition to the panel. If the panel concurs, the case is decided and they issue an opinion or order dismissing the appeal for lack of jurisdiction, rule on the mandamus petition, or act on the successive habeas application. If the judges disagree on the disposition of the case, it is normally reassigned to a screening panel. If briefing is necessary to decide the case, the clerk's office will advise the parties to brief the case, including any special issues the court wishes argued." 5th Cir. Practitioner's Guide at 73. *See also* Guide at 29.

[14] An analogy that comes to mind is the inability to appeal a chief circuit judge's disapproval of a financial stipend for attorney work under the Criminal Justice Act, 18 U.S.C. § 3006A(d)). *See United States v. Smith*, 76 F.Supp.2d 767, 770 (S.D.Tex. 1999) ("The Second, Third, Sixth, Seventh, Ninth, Tenth, Eleventh, and Federal Circuits have all squarely held that district court determination of attorney fees pursuant to § 3006A(d) of the CJA are administrative decisions, not judicial ones, and thus are not "final decisions" for purposes of supporting appellate jurisdiction under 28 U.S.C. § 1291."). *Cf. In re McBryde*, 117 F.3d 208, 221 (5th Cir. 1997) (court of appeals lacks jurisdiction to issue writ of mandamus to judicial council to undo chief district judge's reassignment of a district judge's cases).

Inferring from actions by the Fifth Circuit in 1994 and 2006, it may be concluded that the court's unpublished internal policies provide that reciprocal attorney disciplinary and readmission cases are administrative - over which there is no "judicial" control, to which Art. III does not apply, and as to which 5th Amdt. Due Process rights are attenuated. Taking note of the admission in Deputy Clerk Saltzman's email (8a), it may be deduced that the policies are not published because **the Fifth Circuit is aware that all other courts of appeals treat attorney disciplinary and reinstatement matters as judicial, whereas the Fifth Circuit treats them as administrative.** It may also be inferred due to Petitioner's strong showing of present entitlement to membership in the Fifth Circuit Bar that the court forbids readmission of any attorney disbarred for any reason, even an unconstitutional reason, unless reinstated by the wrongly disbarring court, wherever located whether within or without the Fifth Circuit.[15]

At the same time, the Fifth Circuit treats the Joint Petitions themselves as justiciable for it referred them to a panel of three judges, denied the petitions and accompanying motion, and denied the petitions for panel and *en banc* rehearing. However, this may reflect nothing more than standard referral to a "jurisdictional review panel." *See* n.15, *supra.*

---

[15] *Cf.* 5th Cir. R. 46.1. "Attorneys must have and maintain a valid underlying license to practice law issued by a governmental licensing authority listed in [FRAP] 46(a)(1) to be admitted and continue to practice before this court. ***" 2006 USCA Rules (I) 900 (2006). This is repeated in 5th Cir. Practitioner's Guide at 16.

REASONS *CERTIORARI* SHOULD BE GRANTED

1. VOID 1994 SINGLE-FIFTH-CIRUICT-JUDGE DISBARMENT WOULD ESCAPE REVIEW.

The single-judge disbarment is void as shown herein.

A. Art. III, Sec. 1 provides that: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." Congress has implemented this provision and Art. I, Sec. 8 in 28 U.S.C. § 46(c) and FRAP 27(c).

B. 28 U.S.C. § 46(c) requires a court of appeals to decide cases and controversies in panels of three judges. But the Fifth Circuit disbarred Petitioner by a single judge. The statute provides for *en banc* rehearings. But the court denied him the right to seek such rehearing. A court of appeals that refuses to consider petitions for *en banc* rehearing violates the statute. *See Western Pac. R. Corp. v. Western Pac. R.R. Co.*, 345 U.S. 247, 258-259 (1953), in which this Court differentiated judicial from administrative matters in this way: "The language [that the Reporter's Notes quote from *Textile Mills Secs. Corp. v. Commissioner*, 314 U.S. 326, 332 (1941),] is significant. It describes certain housekeeping functions of a Court of Appeals – functions which cannot be discharged by the court unless, on its own motion, it convenes itself as a body and acts as a body – such as rule making, appointing clerks and fixing the times when court shall be held.").[16] *Id.* at 256. Neither deciding petition for

---

[16] *See also Missouri v. Jenkins*, 495 U.S. 33, 50 (1990) ("We share respondents' concern about the stability and clarity of jurisdictional rules. It is undoubtedly desirable to have published rules of procedure giving parties fair warning of the treatment afforded petitions for rehearing and suggestions for rehearing en

extraordinary writ, disaffirming prior single-judge and state disbarments, nor passing upon attorney reinstatement is a housekeeping or administrative matter. Such is emphatically judicial.

C. FRAP 27(c), *Power of a Single Judge to Entertain a Motion*, provides: "A circuit judge may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding. *** The court may review the action of a single judge." Under 5th Cir. R. 27.2, the enumerated matters that may be decided by a single judge do not include disbarment. While *Woodard v. Hutchins*, 464 U.S. 377 (1984), acknowledges "stay" jurisdiction, no case gives a single circuit judge power to dispose of a case. *See* Adv. Comm. Note to FRAP 27.

D. 5th Amdt. states: "No person shall ... be deprived of life, liberty, or property, without due process of law ...." Revalidation of Petitioner's former license to practice law in the Fifth Circuit is a liberty and property interest that is so protected. *Cf. Gallo v. U.S. District Court*, 349 F.3d 1169, 1179 (9th Cir. 2003), citing *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). Disbarment impacts reputation. *Ex parte Burr*, 9 Wheat. at 530; *Spevak v. Klein*, 385 U.S. 511, 516 (1967). *Cf. In re McBryde*, 117 F.3d 208, 223 (5th Cir. 1997) (district judge entitled to standing to sue because of damage to reputation from reassignment order). Furthermore, the process provided attorneys by all other courts of appeals is indicative of the process to which Petitioner is due in the Fifth Circuit. *See infra.*

---

banc. Requiring adherence to published rules of procedure best promotes the principles of fairness, stability and uniformity that those rules are designed to advance.").

E. Circuit Conflicts. In disciplining members of its own bar, all circuit courts of appeals to have considered the question act in three-judge panels. This shows that courts of appeals consider discipline of their own attorneys to be an Art. III judicial matter and required by the 5th Amdt. *See, e.g., In re Williams*, 398 F.3d 116 (**1st Cir.** 2005) (three-judge panel of First Circuit disbarred Williams from circuit bar based on ME disbarment); *In re Kersey*, 402 F.3d 217 (1st Cir. 2005) (three-judge panel of First Circuit disbarred Kersey from circuit bar based on NH and MA disbarments); *In re Evans*, 834 F.2d 90 (**4th Cir.** 1987) (three-judge panel of Fourth Circuit disbarred Evans from circuit bar in "original proceeding" based on district court disbarment); *In re Fallin*, 255 F.3d 195 (4th Cir. 2001) (three-judge panel of Fourth Circuit suspended Fallin indefinitely from circuit bar based on MD's similar discipline);[17] *In re Watson, supra* (three-judge panel of **Fifth Circuit** suspended Watson from circuit court bar for five years with **permission to apply to the chief judge for readmission to practice** upon satisfactory evidence of readmission to State Bar of TX); *In re Ruffalo*, 370 F.2d 447 (**6th Cir.** 1966), *reversed* 390 U.S. 544, 551 (1968) (three-judge panel of Sixth Circuit disbarred Ruffalo from circuit bar based on Ohio indefinite suspension); *In re Noell*, 93 F.2d 5 (**8th Cir.** 1937) (three-judge panel of Eighth Circuit dismissed original circuit bar proceeding against Noell because state disbarment lacked notice); *Gadda v. Ashcroft*, 377 F.3d 934 (**9th Cir.** 2004) (three-judge panel of Ninth

---

[17] *NB:* Fallin is not absolutely required to be readmitted to the MD bar before applying for reinstatement to the Fourth Circuit Bar. 255 F.3d at 198.

Circuit disbarred Gadda from circuit bar based on actions before Bureau of Immigration Appeals). On the other hand, the only exceptions are the Fifth Circuit's void 1994 single-judge action against Petitioner and the single-judge order of the Federal Circuit that revoked the membership of a member of that court's bar because he was not admitted to *any* state bar. *In re Martin*, 120 F.3d 256 (**Fed.Cir.** 1997).[18]

---

[18] *NB*: all circuit courts act in three-judge panels in considering appeals by attorneys disciplined by lower courts. This shows that courts of appeal consider lower court discipline to invoke Art. III judicial power. *See, e.g., In re Thies*, 662 F.2d 771 (**D.C. Cir.** 1980) (Tax Court disbarred Thies based on NY disbarment; reversed); *In re Gouiran*, 58 F.3d 54 (**2nd Cir.** 1995) (SDNY suspended Gouiran based on DNJ suspension that was in turn based on NJ disbarment; vacated); *In re Surrick*, 338 F.3d 224, 237 (**3rd Cir.** 2003) (PA suspended attorney for five years; district court suspended him for 30 months; affirmed); *In re Medrano*, 956 F.2d 101 (5th Cir. 1992) (district court discipline of Medrano for actions in that court, aff'd).

In re Palmisano, 70 F.3d 483, 484 (**7th Cir.** 1995) (IL disbarred Palmisano who was disbarred by federal district court; affirmed) ("But the discipline or disbarment of an attorney presents a case or controversy within the meaning of Art. III of the Constitution, because it has concrete adverse effects on the attorney that can be rectified by further juridical action"); *In re Hoare*, 155 F.3d 937 (**8th Cir.** 1998) (district court disbarred Hoare based on MO disbarment; affirmed); *In re Kramer*, 193 F.3d 1131 (**9th Cir.** 1999) (district court disbarred Kramer based on disbarment by NY; reversed); *later appeal* 282 F.3d 721 (9th Cir. 2002) (disbarred); *In re Martin*, 400 F.3d 840 (**10th Cir.** 2005 (Tenth Circuit has subject matter jurisdiction to review orders disbarring attorneys from practicing before the bars of federal district courts; district order continuing suspension and denying reinstatement affirmed); *In re Calvo*, 88 F.2d 962 (**11th Cir.** 1996) (Eleventh Circuit has subject matter jurisdiction because reciprocal attorney discipline in district court is "Case" or "Controversy" under Art. III, as to which an appeal lies; district court disbarment of attorney based

F. Supreme Court treats court of appeals's original, disciplinary cases as cases or controversies under Art. III. *See In re Snyder*, 472 U.S. 634 (1985) (Eighth Circuit's order suspending attorney six months for allegedly rude behavior was judicial act subject to Supreme Court's appellate jurisdiction; order reversed because the alleged behavior was not sufficient to warrant suspension for unfitness). For the Fifth Circuit not to do likewise is cause for exercise of supervisory power. *Cf. Ex parte Bradley*, 74 U.S. 364 (1869)[19]; *Ex parte Robinson*, 86 U.S. (19 Wall.) 505 (1874).[20] The supervisory power is appropriate when a federal judge or court has exceeded its powers. *See In re Snyder* (first, chief circuit judge, then, *en banc* court of appeals); *Frazier v. Heebe* (chief district judge, then Fifth Circuit).

G. No Laches. It is never too late to attack a void judgment. *Hazel-Atlas Glass Co. v. Hartford Empire Co., supra* (party could attack circuit court decision more than 10 years after fraud that occurred 12 years before); *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 483 (1982); *Foehl v. United States*, 238 F.3d 474, 480 (3rd Cir. 2001); *Jackson v. FIE Corp., supra; see also cf. In re Watts*, 214 Fed. 80 (2nd Cir. 1914) (mandamus issued to district court requiring entry of judgment in case tried 14 years

---

on FL disbarment which in turn was based on SEC discipline; affirmed) (case contains impermissibly narrow reading of prong 1 of *Selling v. Radford, supra*).

[19] *Ex Parte Bradley* is hard to classify. There the U.S. Supreme Court issued mandamus to the D.C. Supreme Court because it did not have power to disbar Bradley for conduct before a judge of the criminal division of that court. It is not clear whether the offending conduct was treated as primary level discipline, or reciprocal discipline.

[20] In *Robinson*, the district judge summarily disbarred attorney for contempt. The Supreme Court issued mandamus to vacate disbarment.

earlier). Here, the Fifth Circuit waives any purported laches defense and should be held thereto.

H. Right to Exoneration. If simply readmitted to the Fifth Circuit Bar, Petitioner would remain tainted by the disbarments. The reason is that the standard issue on reinstatement is present fitness to practice law, not the validity of past discipline. Pursuing vindication in purely reinstatement proceedings could be deemed indicative of unwillingness to acknowledge the "wrongfulness" of past action. Petitioner's reputational interest in his professional standing suggests that this Court not allow the Fifth Circuit to deprive him of exoneration. As this Court knows, in attorney disciplinary cases there is little or no appellate review, and the government's power over an individual citizen-attorney is at its zenith.

2. VOID 1994 GA DISBARMENT WOULD ESCAPE DISAFFIRMANCE UNDER *SELLING*

A. Introduction: Petitioner is not insisting that this Court decide now that *Jones v. Flowers* proves GA disbarred him improperly. While he hopes for this result, he realizes that no court has yet applied *Jones* to the facts of his case. His purpose here is to show that once the Fifth Circuit decision is vacated or reversed, he should win a judgment that GA denied 14th Amdt. Due Process under *Jones*.

B. 14th Amdt. states: "No State shall ... deprive any person of life, liberty, or property, without due process of law ***". Once acquired, a member of a state bar has a liberty and property interest to practice law of which he or she cannot be deprived without due process. *Willner v. Committee on Character & Fitness*, 373 U.S. 96, 102 (1963); *In re Ruffalo*, 390 U.S. 544 (1968).

C. *Selling v. Radford*, 243 U.S. 46 (1917) (due-process factors for Supreme Court to apply to state disciplinary order to determine if reciprocal federal discipline should be administered to member of federal court bar), states the "conditions", as follows: "[A federal court should recognize a state court disbarment to disbar an attorney from practicing before it -]

> unless, from an intrinsic consideration of the state record, one or all of the following conditions should appear: 1. That the state procedure for want of notice or opportunity to be heard was wanting in due process; 2, that there was such an infirmity of proof as to facts found to have established the want of fair private and professional character as to give rise to a clear conviction on [the court's] part that [it] could not consistently with [its] duty accept as final the conclusion on that subject; or 3, that some other grave reason existed which should convince [the court] that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon [the federal court] not to disbar except upon the conviction that, under the principles of right and justice, [the court] were constrained so to do." 243 U.S. at 51.

The GA disbarment satisfies these three conditions, and the Fifth Circuit should not have relied upon the state judgment to disbar him from federal court.

D. *Jones v. Flowers*, *supra* (AR denied due process to home owner by not utilizing regular mail and posting on his property when certified mail, return receipt requested (which had produced six notices in the mailbox), was returned unclaimed), clarifies prong 1 of *Selling* and reinforces that GA denied Due Process.

E. Supreme Court will reverse a court of appeals's reciprocal discipline for violation of 14th Amdt. Due Process. *See In re Ruffalo, supra* (Sixth Circuit's disbarment of attorney based on Ohio indefinite suspension was judicial act subject to Supreme Court's appellate jurisdiction; state court violated attorney's 14th Amdt. Due Process rights; order reversed).

F. Right to Disaffirmance. Fifth Circuit reliance on GA disbarment proves that the latter has been injurious to Petitioner's professional standing. Fifth Circuit disbarment on void GA disbarment deserves public declaration of infirmity in both. Numerous federal and state courts that have not disciplined Petitioner deserve a considered opinion on this issue to decide whether Petitioner should remain a member of their bar. Thus, this case is a compelling one for *cert.*

3. WRONGFUL DECISION ABOUT JURISDICTION TO REINSTATE ATTORNEY WOULD ESCAPE REVIEW.

A. Supreme Court reinstates attorneys to its Bar, although it has no explicit reinstatement rule.[21] *In re Rose*, 92 L.Ed.2d 764 (1986) (attorney had been admitted over two dissents; he resigned and submitted new application; dissenters revoked their disapproval); *In re Isserman*, 348 U.S. 1 (1954) (on rehearing of Supreme Court disbarment at 345 U.S. 286 (1953), held that disbarment would be vacated because of change in quorum); *In re O'Keefe*, 513 U.S. 923, 1012 (1994) (order to show cause why attorney should not be disbarred was discharged upon consideration of response).

---

[21] Stern, Gressman, et al. *Supreme Court Practice* 864 (8th ed.): "An attorney who has been disbarred by the Supreme Court may subsequently apply for readmission by following the procedures established for an original application for admission."

The Court has acknowledged that courts of appeals have inherent authority and jurisdiction over the discipline and readmission of members of their bar. "Courts have long recognized an inherent authority to suspend or disbar lawyers. [cites *Ex parte Garland* and *Ex parte Burr* discussed below] This inherent power derives from the lawyer's role as an officer of the court which granted admission. [cites *Theard v. United States* discussed below]." *In re Snyder*, 472 U.S. 634, 643 (1985). "The power [over attorneys] is one which ought to be exercised with great caution, but which is, we think, incidental to all Courts, and is necessary for the preservation of decorum, and for the respectability of the profession." *Ex parte Burr*, 22 U.S. (9 Wheat.) 529, 531 (1824) (suspended attorney filed in the Supreme Court a motion for writ of mandamus to the Circuit Court for the District of Columbia to be restored to the Circuit Court Bar) (mandamus denied because conduct of the lower court was not "irregular, or [] flagrantly improper"). The Court has further defined this inherent authority as: "[Attorneys'] admission or their exclusion is not the exercise of a mere ministerial power. It is the exercise of judicial power, and has been so held in numerous cases." *Ex parte Garland*, 4 Wall. 333, 378-79 (1866) (pardoned attorney could not be disbarred under a federal statute forbidding former Confederate sympathizers from acting as lawyers in federal court, or under the Court's own rule to similar effect).

The **standard of review** of a denied petition for reinstatement to a federal court bar has not been otherwise established by the Court than in *Ex parte Burr*, quoted above as "irregular and flagrantly improper," and should be confirmed in this case.

This Court has suggested that a court of appeals's power over attorneys could not extend to disbar an attorney permanently from its Bar. *See Sacher v. Association of Bar*, 347 U.S. 388, 394 (1954) ("Reinstatement may follow 'a sincere and timely change of attitude.'"). Otherwise, there would be a substantive rule of law that no disbarred attorney could rehabilitate himself.[22] *But cf. Ex parte Tillinghast*, 29 U.S. (4 Pet.) 108 (1830) (federal district court disbarment would not prevent admission to Bar of Supreme Court because reason for disbarment did not impugn attorney-applicant's moral character); *In re Snyder, supra* (Eighth Circuit six-month suspension of attorney for allegedly rude comments is reversed because not bad enough to implicate his character); *Theard v. United States*, 354 U.S. 278, 282 (1957) (disqualification from membership in a state bar for criminal activity 14 years ago while insane does not permit disbarment from district court bar).

The high court has clarified that circuit court jurisdiction over its attorneys is not exclusive, *In re Snyder, supra* (*certiorari* granted to review Eighth Circuit's disciplinary order although lower court's power to suspend is inherent authority and derives from lawyer's role as an officer of the court); *In re Ruffalo, supra.*

---

[22] *But cf.* art. III, sec. 3, cl. 2, U.S. Const, which enjoins the federal government from working corruption of blood and forfeiture of estate upon conviction for treason; yet the Fifth Circuit decision is equivalent inasmuch as the court disaffirms jurisdiction over readmission to the Fifth Circuit Bar once an attorney is disbarred there for any reason, even an unconstitutional reason, on any process, even unconstitutional process

B. Circuit Conflicts exist because other circuit courts recognize that they must have a published procedure to readmit or reinstate attorneys. *See Sacher v. Association of the Bar, supra.* And most courts of appeals have a procedure for readmission or reinstatement of disciplined attorneys. *See, e.g.*, **D.C. Cir.** Appx. II, Rules of Disciplinary Enforcement, Rule VII (*Reinstatement*), 28 USCA Rules (Vol. I) 68 (2006); **First Cir.** Rules of Disciplinary Enforcement, Rule 7 (*Reinstatement*), 28 USCA Rules (I) 282 (2006); **Third Cir.** Appx. IV, Rules of Attorney Disciplinary Enforcement, Rule 12 (*Reinstatement*), 28 USCA Rules (I) 573 (2006); **Fourth Cir.** R.46(g)(11), Rules of Disciplinary Enforcement, (11) (*Reinstatement*), 28 USCA Rules (I) 698 (2006); **Sixth Cir.** R. 46(b)(11) (*Reinstatement*), 28 USCA Rules (I) 1026 (2006); **Ninth Cir.** R. 46-2(h) (*Reinstatement*), 28 USCA Rules (Vol. II) 303 (2006); **Tenth Cir.**, Addenda III, Plan for Attorney Disciplinary Enforcement, Section 10 (*Reinstatement*), 28 USCA Rules (II) 449 (2006); **Eleventh Cir.**, Addendum Eight, Rule 9 (*Reinstatement After Disbarment or Suspension*), 28 USCA Rules (II) 647 (2006); **Fed.Cir.** Appx. III, Attorney Discipline Rules, Rule 9 (*Reinstatement*), 28 USCA Rules (II) 822 (2006).

On the other hand, **Second Cir.** R.46(g)(6) permits reinstatement if a conviction is reversed, but mentions no other occasions. 28 USCA Rules (I) 388 (2006). **Fifth Circuit** rules permit attorneys whose licenses have lapsed due to nonpayment of Fifth Circuit dues to be readmitted upon payment or reapplication, but says nothing about reinstatement after discipline. 5th Cir.R.46.1. 28 USCA Rules (I) 900 (2006). The **Seventh Circuit** says nothing about such reinstatement. 7th Cir.R.46(d) & IOP 7(b), 28 USCA Rules (II) 38, 63-64

(2006). The **Eighth Circuit** makes no provision for such reinstatement. 8th Cir. IOP II (*Attorneys*), (E) (*Discipline of Counsel*). 28 USCA Rules (II) 137 (2006).

No other court of appeals, but the Fifth Circuit, has claimed that a petition to readmit an attorney to its bar is addressed to its "appellate" jurisdiction, as opposed to inherent authority and jurisdiction. The assertion that the Fifth Circuit lacks jurisdiction is irregular and flagrantly improper.[23] The Fifth Circuit ignored the suggested parallel to *United States v. Lewis*, 478 F.2d 835, 836 (5th Cir. 1973) ("Just as the imposition of a fine is an incident of a criminal conviction, so is the direction for repayment [of the fine to the payor] an

---

[23] Indeed, a question is raised whether the Fifth Circuit's stated reason for denial of Petition for Readmission is the real reason. Recall 5th Cir. R. 46.1, *supra* at 9. The Fifth Circuit may realize that it has no other basis on which to exclude Petitioner who is a resident of GA which state is no longer within the territorial jurisdiction of the Fifth Circuit. The Fifth Circuit may see that it could not rationally require Petitioner to become readmitted to the State Bar of GA when he is already a member of another state bar (NY) also outside the jurisdiction of the Fifth Circuit. Perhaps, the Fifth Circuit acted so as to avoid a Supreme Court decision on whether readmission to a federal court may be conditioned on readmission to a state bar. *See In re Kandekore*, 460 F.3d (2nd Cir. 2005), in which the Second Circuit stated: "It is an open question in this circuit whether it would similarly be erroneous to require readmission to the state bar before readmission to the federal bar. In an unpublished order related to the same attorney at issue in this case, the Eleventh Circuit found that requiring readmission to the state bar was permissible. *See In re Kandekore*, 140 Fed.Appx. [848,] 849 [(11th Cir. 2005) (*per curiam*)]. The only published opinion on a similar issue from any Court of Appeals that we are aware of is from the Seventh Circuit, which found that denying readmission because of failure to comply with a state court order of suspension was permissible. *See In re Reinstatement of Leaf*, 41 F.3d 281, 284-85 (7th Cir. 1994)." *See In re Martin*, 400 F.3d, *supra*

incident to the vacating and setting aside of the conviction"), that would indicate that court of appeals inherent authority and jurisdiction to discipline an attorney implies as much to readmit him to the bar when it is subsequently determined that the discipline was improperly adjudicated. *Cert.* is needed to resolve confusion over reinstatement after discipline.

4. FIFTH CIRCUIT RELIANCE ON UNPUBLISHED INTERNAL POLICIES WOULD ESCAPE REVIEW

A. Published Local Circuit Court Rules are Authorized. *See* 28 U.S.C. § 2071 and FRAP 47.

B. Unpublished Local Rules are Not Authorized. Title 28 U.S.C. § 2077(a) provides that "The rules for the conduct of the business of each court of appeals, including the operating procedures of such court, shall be published." *See also* 28 U.S.C. § 2071(d). FRAP 47(b) states: "No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local circuit rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement."

C. Unpublished Fifth Circuit Internal Policies Violate 5th Amdt. The deputy clerk stated some of those policies in her June 13, 2006 email (8a). Other policies may be reasonably inferred from the Fifth Circuit's actions in 1994 and 2006 (*supra* at 4-9). Other policies may be inferred from Fifth Circuit cases, some of which are not officially published (*see* D, below).

Fifth Circuit unpublished internal policies[24] affect Petitioner's procedural rights under the 5th Amdt. Due

---

[24] It may be presumed that such unpublished policies contain or condone such invalid substantive rules as the following: (i) The Fifth Circuit does not readmit an attorney unless readmitted by the originally disbarring court even if that state is outside the

Process Clause by denying to him a three-judge panel to determine the validity of circuit and state disbarments underlying his need to seek readmission to the bar. Apparently, those policies affect his substantive rights under the 5th Amdt. by prohibiting reinstatement unless readmitted to the bar of other courts. Lack of publication and notice creates confusion and violates "traditional notions of fair play and substantial justice," *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945), quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940), that is, Due Process, as well as "principles of right and justice," *Frazier v. Heebe*, 482 U.S. at 645.

Indeed, the internal policies permit a structural abnormality in the Fifth Circuit, different from all other federal courts of appeals. The process provided by all other circuits -- but the Fifth Circuit -- establishes the process that is due to a member of a federal court bar who is disciplined by another bar that communicates that information to the forum court which undertakes reciprocal discipline.[25]

---

territorial jurisdiction of the Fifth Circuit. *Cf. In re Watson, supra.* (ii) The Fifth Circuit will not readmit an attorney disbarred by the Eleventh Circuit unless readmitted by the Eleventh Circuit. *See* Letter from Clerk, 7a.

[25] *Cf. Bowen v. City of NY*, 476 U.S. 467, 473, 106 S.Ct. 2022 (1986) (district court was correct that Social Security Administration's "unpublished" "covert" "fixed clandestine policy" mandating a presumption that certain mentally disabled applicants for benefits were qualified to do unskilled work, which effectively eliminated the last two steps of a five-step disability evaluation, was invalid); *Morton v. Ruiz*, 415 U.S. 199, 232 (1974) ("The Administrative Procedure Act was adopted to provide, *inter alia*, that administrative policies affecting individual rights and obligations, be promulgated pursuant to certain stated procedures, so as to

D. Inconsistency in Fifth Circuit. The unpublished internal policies appear not to be consistently applied. *Cf.* Petitioner's case *with In re Thalheim*, 853 F.2d 383, 389 (5th Cir. 1988), quoting *Ex parte Wall*, 107 U.S. 265, 288 (1993) (no discipline without finding of misconduct); *In re Zohdy*, 166 Fed.Appx. 156 (5th Cir. 2006) (three-judge panel sat in reciprocal disciplinary case; attorney disbarred); *In re Watson, supra* (three-judge panel would reinstate attorney if readmitted to TX bar); *In re Medrano, supra.*

5. OTHER REASONS TO GRANT *CERTIORARI*.

A. Fifth Circuit History proves gross unfairness to lawyers. *See, e.g., Theard v. United States*, 228 F.2d 617 (5th Cir. 1956), *rev'd* 354 U.S.278 (1957); *Frazier v. Heebe*, 788 F.2d 1049 (5th Cir. 1986) (Politz, J.), *rev'd* 482 U.S. 641 (1986), and of course, Petitioner's case.

B. Lack of Recent Supreme Court Review of any reciprocal attorney disciplinary case suggests the time is ripe.[26] There are many conflicting decisions with, and within, the Fifth Circuit. In only a handful of cases since *Ruffalo* (1968) has state discipline not *ultimately* resulted in reciprocal federal discipline. *See, e.g., In re Guiran, supra; Surrick v. Killion*, 449 F.3d 520 (3rd Cir. 2006). With tyrannical-like power over attorneys,[27] the

---

avoid the inherently arbitrary nature of unpublished *ad hoc* determinations.").

[26] Stern, Gressman at 861 state: "There are no recorded instances, at least in the recent past, where the attorney has successfully mounted a constitutional challenge to state disbarment proceedings and persuaded the [Supreme] Court to discharge its rule to show cause."

[27] Justice KENNEDY concurring in *Clinton v. New York*, 524 U.S. 417 (1998), states: "Separation of powers was designed to implement a fundamental insight: concentration of power in the hands of a single branch is a threat to liberty. The Federalist states

lower federal courts are unfair to attorneys, and no other authority can assist them but this Court.

C. Judge in Own Case. Apparently, the Fifth Circuit justifies serving as judge in its own case under the rule of necessity. Without a disinterested intermediary, such as special master, or effective Supreme Court oversight, party-as-judge adjudication violates 5th Amdt. Due Process and 28 U.S.C. § 455. *Cf. Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988), *with Withrow v. Larkin*, 421 U.S. 35 (1975).

D. Violation of Full Faith & Credit. Art. IV, Sec. 1 provides that, "Full faith and credit shall be given in each state to ... judicial proceedings of every other state." Congress has prescribed the manner in which such proceedings shall be proved, and the effect thereof, in 28 U.S.C. § 1738. By denying the presumption of good moral and professional character created by NY courts' uninterrupted enrollment of Petitioner into their bar since 1968, the Fifth Circuit has denied full faith and credit to NY judicial proceedings and violated the constitution and statute.

CONCLUSION

Because of improper appearances, abuse of power, and arbitrary decisions below, the Supreme Court must do more to protect attorneys and therefore should grant the writ of *certiorari* and direct the Fifth Circuit panel to find some way to address the merits of Petitioner's Joint Petitions. Respectfully submitted,

Winford Kent Bishop

---

the axiom in these explicit terms: 'The accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny.' The Federalist No. 47, p. 301 (C. Rossiter ed., 1961)."

Filed: August 8, 2006
Charles R. Fulbruge, III, Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-00029

IN RE: WINFORD KENT BISHOP,

Petitioner.

Petition for Writs of Mandamus and Prohibition
to the United States Court of Appeals
for the Fifth Judicial Circuit
and Petition for Readmission to the Fifth Circuit Bar

Before SMITH, GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:

Winford Kent Bishop has filed in this court a pro se petition for a writ of mandamus, a writ of prohibition, and a petition for readmission to the Fifth Circuit Bar. Bishop, an attorney, argues that his 1994 disbarment in Georgia was unconstitutionally contrived and that this court also unconstitutionally disbarred him from

practice before us in 1994. He argues that then-Chief Judge Henry A. Politz could not act unilaterally in disbarring him from the Fifth Circuit, that he was entitled to an explanation, and that his disbarment was impermissibly based on the flawed Georgia disbarment.

As relief, Bishop asks that we direct the Clerk of the Fifth Circuit Court of Appeals to assign Bishop's disbarment proceeding to a regular three-judge panel and to send Bishop a copy of our non-public court policies. He asks that we direct the Fifth Circuit Court of Appeals to vacate his July 15, 1994, disbarment, [page 2] prohibit the chief judge from adjudicating the proceeding as a one-judge matter, readmit him to the Bar of the Fifth Circuit, and schedule oral argument on this mandamus petition.

The All Writs Act, 28 U.S.C. § 1651(a), sets out the limits of our mandamus authority: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." The writ of mandamus "has traditionally been used in the federal courts only to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *Allied Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35 (1980) (citations and internal quotation marks omitted). "As the jurisdiction of the circuit court of appeals is exclusively appellate, its authority to issue writs of mandamus is restricted by statute to those cases in which the writ is in aid of that jurisdiction." *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 25 (1943).

This court has no "appellate" jurisdiction over proceedings concerning admission to practice law before us. Accordingly, we lack jurisdiction to entertain Bishop's requested relief. Bishop's motion to incorporate the record from proceedings in 1993 and 1994 is denied as moot.

PETITIONS DENIED; MOTION DENIED AS MOOT.

Filed: July 15, 1994
Charles R. Fulbruge, III, Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ORDER

W. Kent Bishop has filed a pleading entitled "Respondent's Showing of Good Cause Why Disbarment Should Not Be Ordered; Request For Oral Argument, Evidentiary Hearing, and Expedited Treatment", in answer to this Court's May 25, 1994 Show Cause Order. After review of the response and extensive supporting materials, the Requests for Oral Argument and an Evidentiary Hearing are DENIED; the Request for Expedited Treatment is DENIED as moot, and it is HEREBY ORDERED that W. Kent Bishop be disbarred from practice before this court, effective this 11th day of July, 1994.

s/ Henry A. Politz
Henry A. Politz
Chief Judge
United States Court of Appeals
for the Fifth Circuit

Filed: October 4, 2006
Charles R. Fulbruge, III, Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-00029

WINFORD KENT BISHOP

Petitioner

- -

Petition for Writs of Mandamus and Prohibition
to the United States Court of Appeals
for the Fifth Judicial Circuit
and Petition for Readmission to the Fifth Circuit Bar

- -

ON PETITION FOR REHEARING AND REHEARING EN BANC

(Opinion 08/08/06, 5 Cir.,____, ____ F.3d _____)

Before SMITH, GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:
(X) The Petition for Rehearing is DENIED and no member of this panel nor judge in regular active

service on the court having requested that the court be polled on Rehearing En Banc, (Fed.R.App.P. and 5th Cir. R. 35) the Petition for Rehearing En Banc is also DENIED.

( ) The Petition for Rehearing is DENIED and the court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor, (Fed.R. App.P. and 5th Cir. R. 35) the Petition for Rehearing En Banc is also DENIED.

( ) A member of the court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service and not disqualified not having voted in favor, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

s/ Jerry Smith
United States Circuit Judge

REHG-4A

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-589-6514
600 CAMP STREET
NEW ORLEANS, LA. 70130

August 4, 1994

Mr. W. Kent Bishop
Attorney at Law
P.O. Box 11813
Atlanta, Georgia 30355

Dear Mr. Bishop:

I forwarded your "Petition to Vacate Void, Single-Judge Order Coram Non Judice, To Appeal/Assign Proceedings to Established Three-Judge Panel, for (Re)hearing, and Suggestion for (Re)hearing en banc" to the Court.

I have been directed to advise you that this matter will not be referred to a three-judge panel, nor heard en banc, nor will a special master be appointed.

When the Eleventh Circuit concludes its action on your case, please advise us of the results. Until that time, your name will remain removed from the rolls of attorneys permitted to practice before this Court, and the Order entered July 15, 1994 remains intact.

Sincerely,

s/ Charles R. Fulbruge III
Charles R. Fulbruge III

Email dated June 13, 2006, from Fifth Circuit Deputy Clerk Saltzman (Shelley_Saltzman@ca5.uscourts.gov) to Petitioner (wkentbishop@hotmail.com):

Dear Mr. Bishop:

Further to your telephone inquiry this morning, please be advised that this court follows the procedures set out in FRAP 46 governing attorney admissions and attorney discipline. With regard to your question about the delegation of such matters to the chief judge (rather than a three-judge panel as happens in other circuits), please be advised further that this court's internal policies provide that the chief judge, or a designee, shall handle all suspensions, removals from the court's roll, and other disciplinary matters. These policies were most recently affirmed in January 2006.

The court's internal policies are not for public distribution and I am, therefore, unable to provide you with a copy.

Yours sincerely,

Shelley E. Saltzman
Deputy Clerk
Court of Appeals for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130

Tel: 504-310-7700

Email dated October 6, 2006, from Fifth Circuit Deputy Clerk Lopez (Allison_Lopez@ca5.uscourts.gov) to Petitioner (wkentbishop@hotmail.com):

> You may serve the Clerk of Court with a courtesy copy of your petition filed with the Supreme Court.

Email dated October 6, 2006, from Petitioner to Ms. Lopez:

> October 6, 2006
> Ms. Lopez:
>
> I have a present intention to seek in the Supreme Court of the United States a writ of certiorari to the Fifth Circuit.
>
> I presume that this email will fulfill any duty to give notice.
>
> Whom should I list in the Proof of Service of the Petition – the Court itself, the Clerk of Court, or the individual judges?
>
> Thank you, Kent Bishop

CONSTITUTIONAL & STATUTORY PROVISIONS

The Fifth Amendment to the United States Constitution states, in relevant part: "No person shall ... be deprived of life, liberty, or property, without due process of law ...." The Fourteenth Amendment states, in relevant part: "No State shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 46(c) of Title 28 U.S.C. provides in part that: "Cases and controversies shall be heard and determined by a court or **panel of not more than three judges** ..., unless a hearing or rehearing before the court in banc is ordered by a majority of the circuit judges of the circuit who are in regular active service. ***" (emphasis added).

Section 2077(a) of Title 28 U.S.C. provides that: "The **rules** for the conduct of the business of each court of appeals, including the operating procedures of such court, **shall be published.**" (emphasis added).

Rule 27(c) of FRAP provides that: "(c) Power of Single Judge to Entertain Motions. In addition to the authority expressly conferred by these rules or by law, a single judge of a court of appeals may entertain and may grant or deny any request for relief which under these rules may properly be sought by motion, except that **a single judge may not dismiss or otherwise determine an** appeal or **other proceeding**, and except that a court of appeals may provide by order or rule that any motion or class of motions must be acted upon by the court. The action of a single judge may be reviewed by the court." (emphasis added).